

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-211197

**DATE:** April 21, 1983

**MATTER OF:** REDM Corporation

**DIGEST:**

Protest that bidder is incapable of meeting solicitation delivery schedule is dismissed since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO absent a showing of possible fraud or bad faith on the part of the procuring officials or that the solicitation contains definitive responsibility criteria that have not been applied.

REDM Corporation protests the award of a contract for electronic cables to Apoca Industries, Inc., the second low bidder under invitation for bids (IFB) No. DAAB07-83-B-8060, issued by the Army Communications-Electronics Command, Fort Monmouth, New Jersey. The low bidder is ineligible for award of the contract because the solicitation restricted bidders to prior manufacturers of the item. REDM contends that Apoca should be found to be non-responsible for this contract because it has been delinquent on other contracts. REDM explains that the Small Business Administration has recently refused to issue a Certificate of Competency to Apoca in connection with a previous procurement of cables and that Apoca has consistently failed to comply with the delivery schedules under existing Army contracts. REDM states that Apoca does not have the production capacity to meet its current delivery requirements while its production capabilities have been recently further reduced by loss of key personnel. REDM concludes that it is not possible to make a good faith determination that Apoca is responsible in light of these circumstances. In effect, REDM is alleging that Apoca will not be able to deliver the cables in accord with the solicitation delivery schedule. We dismiss the protest.

First, we believe REDM's protest on this basis to be premature, since a pre-award survey of Apoca has not yet been completed. Moreover, this Office does not review protests of affirmative determinations of responsibility,

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which is largely a business judgment, unless there is a showing of possible fraud or bad faith on the part of the procuring officials or that the solicitation contains definitive responsibility criteria which have not been applied. Echelon Service Company, B-209284.2, December 2, 1982, 82-2 CPD 499. REDM contends, however, citing Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, that we should review the merits of any agency affirmative determination of responsibility because such a finding would not be rational in view of the solicitation provision which states that "timely delivery is critical" and is required for concurrent M-1 tank production.

A solicitation provision which notifies bidders of the critical nature of a delivery schedule does not constitute a definitive responsibility criterion so that a protest alleging that a bidder is incapable of meeting a delivery schedule is not a matter we will review. See Mars Signal Light Company, B-205235, October 28, 1981, 81-2 CPD 363. A definitive responsibility criterion is an objective standard of responsibility--such as a particular level of specific experience--that a bidder must possess as a prerequisite to award. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. Data Test Corporation, *supra*, is the precursor of our line of cases that announced the exception to our general policy of not reviewing affirmative determinations of responsibility except where the solicitation includes definitive responsibility criteria that allegedly have not been met, Atlantic Maintenance Company, 54 Comp. Gen. 686 (1975), 75-1 CPD 108, and it therefore does not provide an additional exception to that policy.

There also has been no showing of possible bad faith here. While a bidder's prior performance history and ability are clearly factors to be considered in determining a prospective contractor's responsibility, Defense Acquisition Regulation 1-905.1(c) (1976 ed.), an affirmative determination of responsibility in the face of unfavorable information may well reflect on contracting officer's business judgment, but is not itself evidence of bad faith per se.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel